

**APR 29 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PETER ALDAY,

Defendant - Appellant.

No. 02-50150

D.C. No. CR-00-01050-WJR-01

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
William J. Rea, District Judge, Presiding

Argued and Submitted March 5, 2003  
Pasadena, California

Before: PREGERSON, THOMAS, and RAWLINSON, Circuit Judges.

Appellant Peter Alday's ("Alday") second conviction was obtained through use of the same evidence that resulted in a "not guilty" verdict in his first trial. At oral argument, the government effectively conceded that the ultimate issues in

---

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

both trials were Alday's lack of predisposition to engage in the drug transactions and inducement on the part of the government's agent. Because "the Government's case depend[ed] on facts found in defendant's favor by an acquittal [in the first trial], collateral estoppel preclude[d] the Government from attempting to reprove those facts and, hence, from retrying the defendant." *United States v. James*, 109 F.3d 597, 600 (9th Cir. 1997) (citation omitted). Alday's retrial "involve[d] ultimate issues that have already been conclusively determined adversely to the Government." *See id.* at 601. Therefore, collateral estoppel precluded the government from retrying the ultimate issues of Alday's predisposition and the government agent's inducement that existed on or before July 16, 1999, which is the date of the sale charged in Count One for which he was found not guilty at his first trial."

REVERSED.